

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION TWO

FILED BY CLERK

APR 19 2007

COURT OF APPEALS  
DIVISION TWO

THE STATE OF ARIZONA,	)	
	)	
Respondent,	)	2 CA-CR 2006-0356-PR
	)	DEPARTMENT A
v.	)	<u>MEMORANDUM DECISION</u>
	)	Not for Publication
BRUCE D. HOFFMAN,	)	Rule 111, Rules of
	)	the Supreme Court
Petitioner.	)	
_____	)	

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF GILA COUNTY

Cause No. CR20020449

Honorable Robert Duber, II, Judge

REVIEW GRANTED; RELIEF DENIED

Daisy Flores, Gila County Attorney  
By June Ava Florescue

Globe  
Attorneys for Respondent

Dan W. Montgomery

Tucson  
Attorney for Petitioner

PELANDER, Chief Judge.

¶1 Pursuant to a plea agreement containing a fixed term of imprisonment, petitioner Bruce Hoffman was convicted of attempted sexual conduct with a minor, sexual abuse, and sexual conduct with a minor. In September 2003, the trial court imposed

concurrent, aggravated prison terms, the longest of which was seven years, and placed Hoffman on lifetime probation, all in accordance with the plea agreement's terms. The trial court found the following factors in aggravation: the offenses involved more than one victim, the "belief that [Hoffmann had] conveyed a communicable disease[]" to the victims, the emotional harm inflicted on one of the victims, and Hoffman's violation of a position of trust.

¶2 Hoffman filed a timely, of-right, notice of post-conviction relief pursuant to Rule 32, Ariz. R. Crim. P., 17 A.R.S., on December 17, 2003. It was not until June 13, 2006, however, that Hoffman filed his Rule 32 petition alleging he had been sentenced in violation of *Blakely v. Washington*, 542 U.S. 296, 124 S. Ct. 2531 (2004), because the judge, rather than a jury, had determined the factors used to aggravate his sentence. The trial court denied Hoffman's petition as follows:

IT IS HEREBY ORDERED Defendant's request for post-conviction relief is denied as being untimely filed and because Defendant is not entitled to post-conviction relief as clearly stated in *State v. Febles*, 210 Ariz. 589, 115 P.3d 629 (Ariz. App. . . . 2005)[].

In Hoffman's petition for review, he again argues he is entitled to relief pursuant to *Blakely*. He does not address the trial court's finding that his claim was untimely.

¶3 After granting review, we stayed these proceedings and revested jurisdiction in the trial court and directed the court to clarify what it meant by its statement in its minute entry that Hoffman's "request for post-conviction relief[was] . . . untimely filed." The trial

court has now supplemented its order to explain that, although Hoffman’s notice of post-conviction relief was timely, his petition was not filed within sixty days of his receipt of requested transcripts as the court had ordered and as required by Rule 32.4(c)(2) and (d), Ariz. R. Crim. P. Indeed, the trial court found that 810 days had elapsed between Hoffman’s receipt of transcripts and the filing of his petition, and “[a]ccordingly, the Court considered the pleading as untimely filed.”<sup>1</sup>

¶4 The trial court acted within its discretion in dismissing a petition that had been filed more than two years after the court-imposed deadline for filing with no showing by Hoffman that he was entitled to additional time based on either good cause or exceptional circumstances. *See State v. Watton*, 164 Ariz. 323, 325, 793 P.2d 80, 82 (1990) (denial of post-conviction relief reviewed for abuse of discretion); Ariz. R. Crim. P. 32.4(c)(2) (“On a showing of good cause, a defendant in a non-capital case may be granted a thirty day extension within which to file the petition. Additional extensions of thirty days shall be granted only upon a showing of extraordinary circumstances.”). “Petitioners must strictly

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<sup>1</sup>In its clarified order, the trial court also remarked that Hoffman’s notice of post-conviction did not include any “reasons supporting the request” for relief. This would not have provided a basis for dismissal of the notice, however, as a Rule 32 notice is only required to set forth “meritorious reasons” why a claim made in a late or successive petition falls within one of the exceptions to preclusion listed in Rule 32.2(b). *See* Ariz. R. Crim. P. 32.2(b) and 32.4(a). Otherwise, in a timely filed Rule 32 proceeding, “[t]he petition puts flesh and muscle on the skeleton provided by the notice.” *Canion v. Cole*, 210 Ariz. 598, ¶ 5, 115 P.3d 1261, 1262 (2005). Because we conclude the trial court did not abuse its discretion by dismissing the petition as untimely, we need not address this or any other alternative ruling suggested by the court’s clarified order.

comply with Rule 32 or be denied relief,” and “[f]ailure to comply with Rule 32 procedure will result in a finding that petitioner waived his right to present a Rule 32 petition.” *State v. Carriger*, 143 Ariz. 142, 146, 692 P.2d 991, 995 (1984); *see also State v. Jones*, 182 Ariz. 432, 434, 897 P.2d 734, 736 (App. 1995) (suggesting supreme court set time limits in Rule 32.4(a) in order to “prevent *unwarranted delay*”).

¶5 Hoffman failed to strictly comply with Rule 32 procedure because he did not abide by the court’s scheduling order or applicable rules; therefore, the trial court did not abuse its discretion in dismissing Hoffman’s notice and petition. *See Carriger*, 143 Ariz. at 146, 692 P.2d at 995. Although we grant review, we deny relief.

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JOHN PELANDER, Chief Judge

CONCURRING:

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JOSEPH W. HOWARD, Presiding Judge

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GARYE L. VÁSQUEZ, Judge